



GRI 401

Doing Things the Right Way
Ethics & Professionalism

Student Guide

TREEF
—>—
TENNESSEE
REAL ESTATE
EDUCATION
FOUNDATION



TENNESSEE
REALTORS®



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Course Introduction

This one-day course covers the Code of Ethics and the broader issue of professionalism in real estate practice, addressing the most troubling ethical challenges and concerns that arise in everyday practice, the effective resolution of conflicts when they arise, and other topics such as: confidentiality, inter-agent communications, procuring cause, ombudsman program, grievance filing, mediation and arbitration.

GRI 401 Learning Objectives

Upon completion of this course, participants will be able to:

1. Recognize recent changes to the Code of Ethics.
2. Identify the most common ethical violations occurring in real estate practice (and how to avoid them!)
3. Recognize our duty of confidentiality.
4. Ethically submit and work all offers to purchase.
5. Resolve conflicts that arise more effectively.
6. Identify the factors that actually determine procuring cause in a transaction.
7. Recognize the differences between mediation and arbitration, and when each is best used.
8. Describe what true professionalism looks like in real estate practice!



Course Content

Part 1 Keeping Current on the Code of Ethics

Part 2 Duties to Clients and Customers

Part 3 Conflict Resolution: Ombudsman and Mediation

Part 4 Procuring Cause and Arbitration

Part 5 Mediation and Arbitration

Part 6 Filing a Grievance

Part 7 What Does True Professionalism Look Like?

Appendix

Part 1: Keeping Current on the Code of Ethics

At the foundation of your business is the Code of Ethics. The Preamble, Articles, and Standards of Practice therein provide the duties and responsibilities for operating as a REALTOR®.

Duties to Clients and Customers **Articles**
1 - 9

Duties to the Public **Articles**
10 - 14

Duties to REALTORS®
Articles 15 - 17

Basic Principles of the Code of Ethics

1. Protect and promote your client's interests but be honest with all parties.
2. Avoid exaggeration, misrepresentation, and concealment of pertinent facts. Do not reveal facts that are confidential under the scope of your agency relationship.
3. Cooperate with other real estate professionals to advance your client's best interests.
4. When buying or selling, make your position in the transaction or interest known.
5. REALTORS will not provide professional services when there's a conflict of interest unless that interest is specifically disclosed to affected parties.
6. Avoid side deal without your client's informed consent.
7. Accept compensation from only one party, except with full disclosure and informed consent.
8. Keep the funds of clients and customers in escrow.
9. Assure, whenever possible, that transaction details are in writing.
10. Provide equal service to all clients and customers regardless of race, color, religion, gender, etc.
11. Be knowledgeable and competent in the fields of practice in which you ordinarily engage. Obtain assistance or disclose lack of experience if necessary.
12. Communicate honestly and present a true picture in your advertising, marketing and other representations.
13. Do not engage in the unauthorized practice of law.
14. Be a willing participant in Code enforcement procedures.
15. Ensure that your comments about other real estate professionals are truthful, and not misleading.
16. Respect the exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with their clients
17. Arbitrate and mediate contractual and specific non-contractual disputes with other REALTORS® and with your clients.

Code of Ethics

The REALTOR® Code of Ethics is a dynamic, living document that guides our professional activities and our relationships with other practitioners. *“While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.”*

Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. (Amended 1/00)

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, “Whatsoever ye would that others should do to you, do ye even so to them.”

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. (Amended 1/07)

Recent Changes to the Code of Ethics

Standard of Practice 1-8

REALTORS®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. Upon the written request of the listing broker who submits a counter-offer to the buyer’s tenant’s broker, the buyer’s/tenant’s broker shall provide, as soon as practical, a written affirmation to the listing broker stating that the counter-offer has been submitted to the buyers/tenants, or a written notification that the buyers/tenants have waived the obligation to have the counter-offer presented. REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. (Adopted 1/93, Amended 1/22)

Standard of Practice 10-5

REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Adopted and effective November 13, 2020)

Under Statement of Professional Standards Policy #29, REALTORS® are subject to the Code of Ethics' standards in all of their activities. Thus, a violation of Article 10, as supported by Standard of Practice 10-5, can occur when a REALTOR® uses harassing speech, hate speech, epithets and slurs based on the protected classes in any media or context, regardless of whether related to their activities in the real estate business or their identification as a REALTOR®.

Standard of Practice 12-1

REALTORS® must not represent that their brokerage services to a client or customer are free or available at no cost to their clients, unless the REALTOR® will receive no financial compensation from any source for those services. (Amended 1/22)

Source: <https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/2022-code-of-ethics-standards-of-practice>

Duties to Clients and Customers

Examples of Common Code Violations

- a. Compromising Confidential Information
- b. Failure to Disclose Agency Status
- c. Failure to submit all offers objectively and as quickly as possible
- d. Failure to timely deliver copies upon signing.

Examples from Tennessee REALTORS® Code of Ethics Enforcement

- a. Article 1: failure to treat all parties honestly and in best interest
- b. Article 2: Concealment of pertinent facts relating to the property
- c. Article 9: Failure to ensure documents are kept up-to-date and that all agreements and amendments are reduced to writing

Real-life Ethical Challenges Faced in Real Estate

The Following MAY or MAY NOT be a violation of the Code in the scenario. As a group, determine which Article these scenarios would be referring to.

1. A showing agent calls a listing agent to ask if they have an offer on it. The agent replies, I can't answer that question.
2. Susie is working with her nephew, Mike to buy a home. She doesn't disclose that she is related to the Buyer in her offer.
3. Rachel is new in the business and desperately wants a listing. At a listing appointment she assures the seller that due to her marketing efforts, she will be able to obtain more money for the property than the comparable actually show.
4. Bill has an appointment with a potential seller. The seller informs him that he will be interviewing Tom as well. Tom was just found guilty at TREC of a violation of State Advertising Rules. Bill believes that the Seller should know this.
5. Jean and Laura have been working on a contract together and all has been going smoothly along the way. They're scheduled to close 2 days from now. The Lender calls to state that the Closing CD didn't get out yesterday as it should have but will go today. This means they will close 3 days from now, not 2. Sellers and Buyers are informed, and all seem to be happy with this. On closing day, the Buyers call their agent and say they have had a change of heart and don't feel that this is the home for them. They are not going to close. The Sellers are furious with this!

“Violation or Not a Violation”

1. You are on your way to a concert when you get a call that an offer on one of your listings. The offer expires in 36 hours. You decide to wait until morning and present it to the sellers.

 Violation
 Not a violation

2. Since the house is vacant, you comply with your buyer’s wish that you leave the back door open so that your buyer can bring his parents by later the same afternoon. You check the house later that afternoon to make sure that it is secure.

 Violation
 Not a violation

3. Your client, the attorney, says that she thinks the list price should be \$330,000. Based on your research, you feel that the property is worth more like \$350,000. She’s the boss so you say nothing.

 Violation
 Not a violation

4. Late one night, you meet your clients in a parking lot so that they can sign documents to complete the transaction. You tell them that you will get copies to them sometime tomorrow. They say, “OK.”

 Violation
 Not a violation

5. Your Bosnian customers say that they would really like to live close to other Bosnians. You decide to put them in touch with a Bosnian friend so that they can discuss neighborhoods.

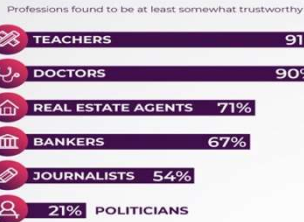
 Violation
 Not a violation

6. You are contacted to list a complex commercial property. You keep your lack of experience to yourself and respond to the seller that you will gladly take the listing.

 Violation
 Not a violation

THE MOST AND LEAST TRUSTWORTHY OCCUPATIONS IN AMERICA

WHO CAN WE TRUST ...?



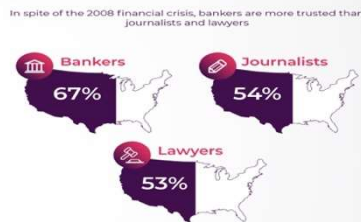
(IN)COMPLETE TRUST



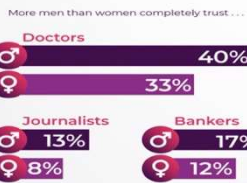
AGE MORE, TRUST LESS



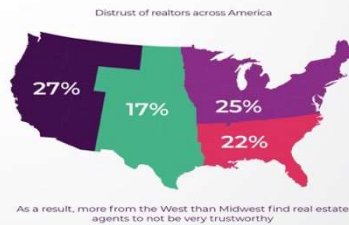
WHAT FINANCIAL CRISIS?



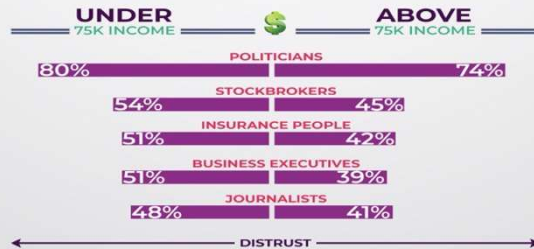
GENDER GAP



REALTOR REALITY BITES



MONEY MAKES DISTRUST GO 'ROUND'



*DISCLAIMER: The statistics shown above are based on surveys conducted by Purplebricks and Kelton Global. To learn more, visit purplebricks.com



Source: [https://www.businesswire.com/news/home/20180918005181/en/An-Era-of-Eroding-Trust-Nation\[...\]ans-Find-the-Most-%E2%80%93-or-Least-%E2%80%93-Trustworthy](https://www.businesswire.com/news/home/20180918005181/en/An-Era-of-Eroding-Trust-Nation[...]ans-Find-the-Most-%E2%80%93-or-Least-%E2%80%93-Trustworthy)

Part 2: Duties to Clients and Customers

What CAN and CANNOT Be Said or Done when Working with a Cooperative Agent

Basic Principle of the Code of Ethics – Protect and promote your client’s interests, but be honest with all parties.

A. Confidentiality of customer/client communications

In discussing offers and contracts, perhaps one of the most important areas is confidentiality. In a multiple offer situation, it is imperative that you use extra care in regards to what you are disclosing. Each cooperating agent should be working from the same set of facts to ensure a level playing field.

The following is the Tennessee state law highlighting (in section 3) confidentiality.

§ 62-13-403. Duty owed to all parties.

A licensee who provides real estate services in a real estate transaction shall owe all parties to such transaction the following duties, except as provided otherwise by § 62-13-405, in addition to other duties specifically set forth in this chapter or the rules of the commission:

- (1) Diligently exercise reasonable skill and care in providing services to all parties to the transaction;
- (2) Disclose to each party to the transaction any adverse facts of which licensee has actual notice or knowledge;**
- (3) Maintain for each party to a transaction the confidentiality of any information obtained by a licensee prior to disclosure to all parties of a written agency or sub-agency agreement entered into by the licensee to represent either or both of the parties in a transaction. This duty of confidentiality extends to any information which the party would reasonably expect to be held in confidence, except for information which the party has authorized for disclosure, information required to be disclosed under this part, and information otherwise required to be disclosed pursuant to this chapter. This duty survives both the subsequent establishment of an agency relationship and the closing of the transaction;**
- (4) Provide services to each party to the transaction with honesty and good faith;**
- (5) Disclose to each party to the transaction timely and accurate information regarding market conditions that might affect such transaction only when such information is available through public records and when such information is requested by a party.
- (6) Timely account for trust fund deposits and all other property received from any party to the transaction; and
- (7) (A) Not engage in self-dealing nor act on behalf of licensee's immediate family, or on behalf of any other individual, organization or business entity in which the licensee has a personal interest without prior disclosure of such interest and the timely written consent of all parties to the transaction; and

- (B) Not recommend to any party to the transaction the use of services of another individual, organization or business entity in which the licensee has an interest or from whom the licensee may receive a referral fee or other compensation for the referral, other than referrals to other licensees to provide real estate services under the Tennessee Real Estate Broker License Act of 1973, without timely disclosing to the party who receives the referral, the licensee's interest in such referral or the fact that a referral fee may be received. [Acts 1995, ch. 246, § 5; 1996, ch. 772, §§ 5, 6.]

Fiduciary Duty Is Not Expendable Like a Hat

At the height of the economic downturn a few years ago, a Tennessee broker talked her client into selling her troubled properties for \$10 to a firm the broker owned. Today, the broker is barred from practicing real estate, her license permanently revoked. The broker's wrongdoing? She thought she could take her broker hat off and replace it with her buyer hat whenever she wanted. A Tennessee appellate court said she couldn't do that.

In 2007, broker Donna Bobo represented Shalah Smith in Smith's \$60,000 purchase of a string of rental properties. Soon thereafter, Smith faced foreclosure on the properties and came to Bobo for guidance. Bobo advised Smith of three options: allow the foreclosure, enter a short sale, or, in order to avoid impacting her credit record, quitclaim the property to Global Investment Services, a limited liability partnership that Bobo owned, for \$10.

Smith chose the last option, and signed the properties over to Global. In their written agreement, Global agreed to collect rent, maintain the property, and pay the mortgages on time. If it failed to do so, Global would convey the properties back to Smith within 30 to 60 days. The mortgages and related liabilities remained in Smith's name.

Global failed to pay the mortgages in a timely fashion, and Smith received notice that the properties were in default. Once again facing foreclosure proceedings, Smith demanded that Bobo return the properties, per their agreement. But Bobo refused, and Smith filed a complaint with the Tennessee Real Estate Commission. A Tennessee broker learned the hard way that you can't just easily switch roles between buyer and broker.

In proceedings, Bobo argued that, although she was both a real estate broker and a property manager for Smith at various times, her actions were not subject to the state's Real Estate Broker Act. That's because, when Smith quitclaimed the properties to Bobo's company, Bobo was acting as a purchaser, not as Smith's real estate representative.

The commission rejected this argument, saying "equity will not tolerate such a deal," and permanently revoked Bobo's real estate license. The commission found Bobo had made false representations to her client, induced her client to enter into an unconscionable contract, and manipulated her client for her own gain.

A relationship of trust between broker and client, the court said in its ruling, "once assumed, continues until discharged either by operation of law, by order of a tribunal, or pursuant to a valid agreement of the parties." In other words, brokers cannot avoid their fiduciary duties simply by claiming to have switched from the broker hat to the purchaser hat.

The Tennessee Court of Appeals affirmed the decision.

Part 3: Conflict Resolution: Ombudsman and Mediation

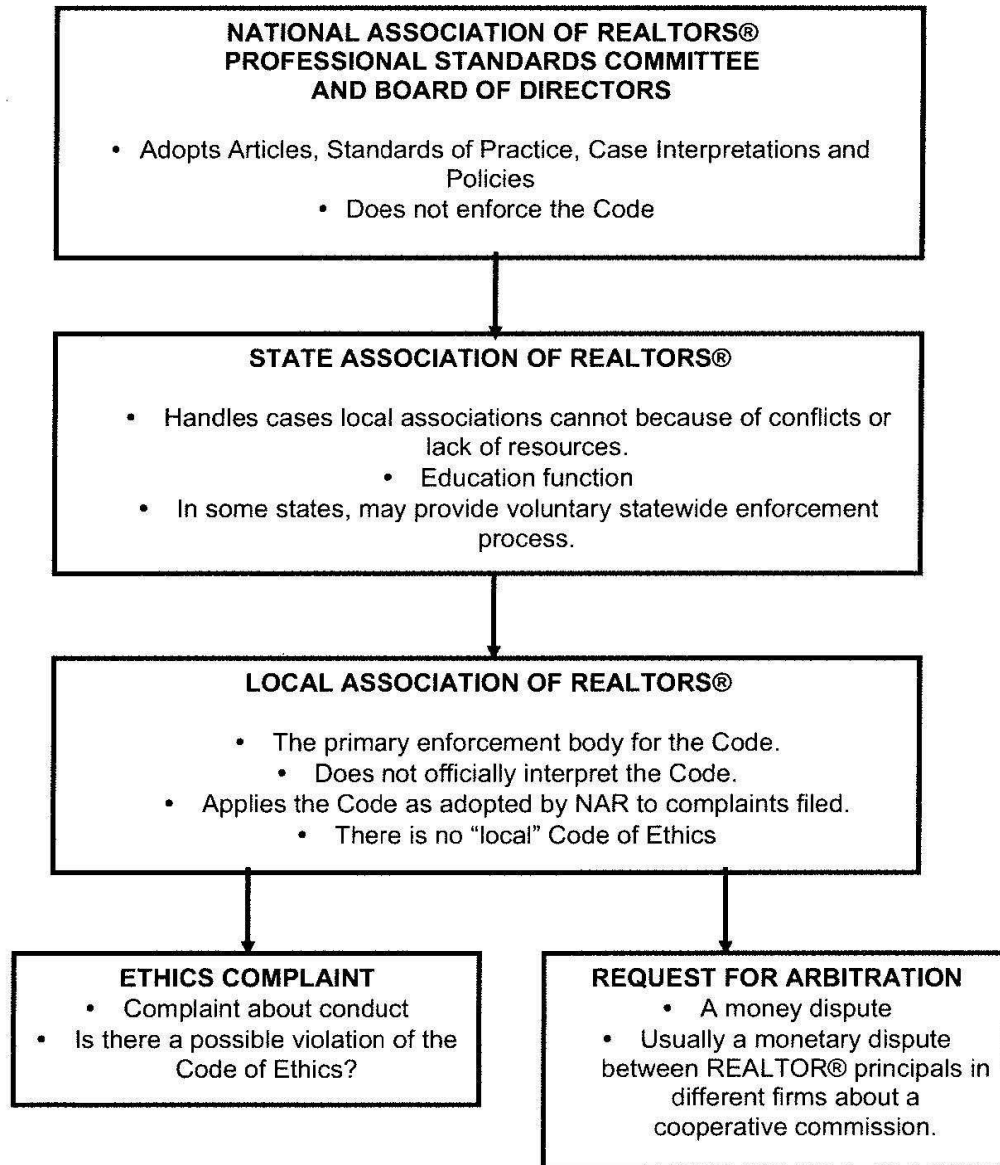
How to resolve issues in the early stages, before they are taken to a higher level

- a. Agent-to-Agent Communication**
- b. Broker-to-Broker communication**

All associations are required to offer ombudsman services to their members, clients, and customers either directly or through an agreement with other associations. The program offers an opportunity for informal resolution of an issue related to a communication breakdown.

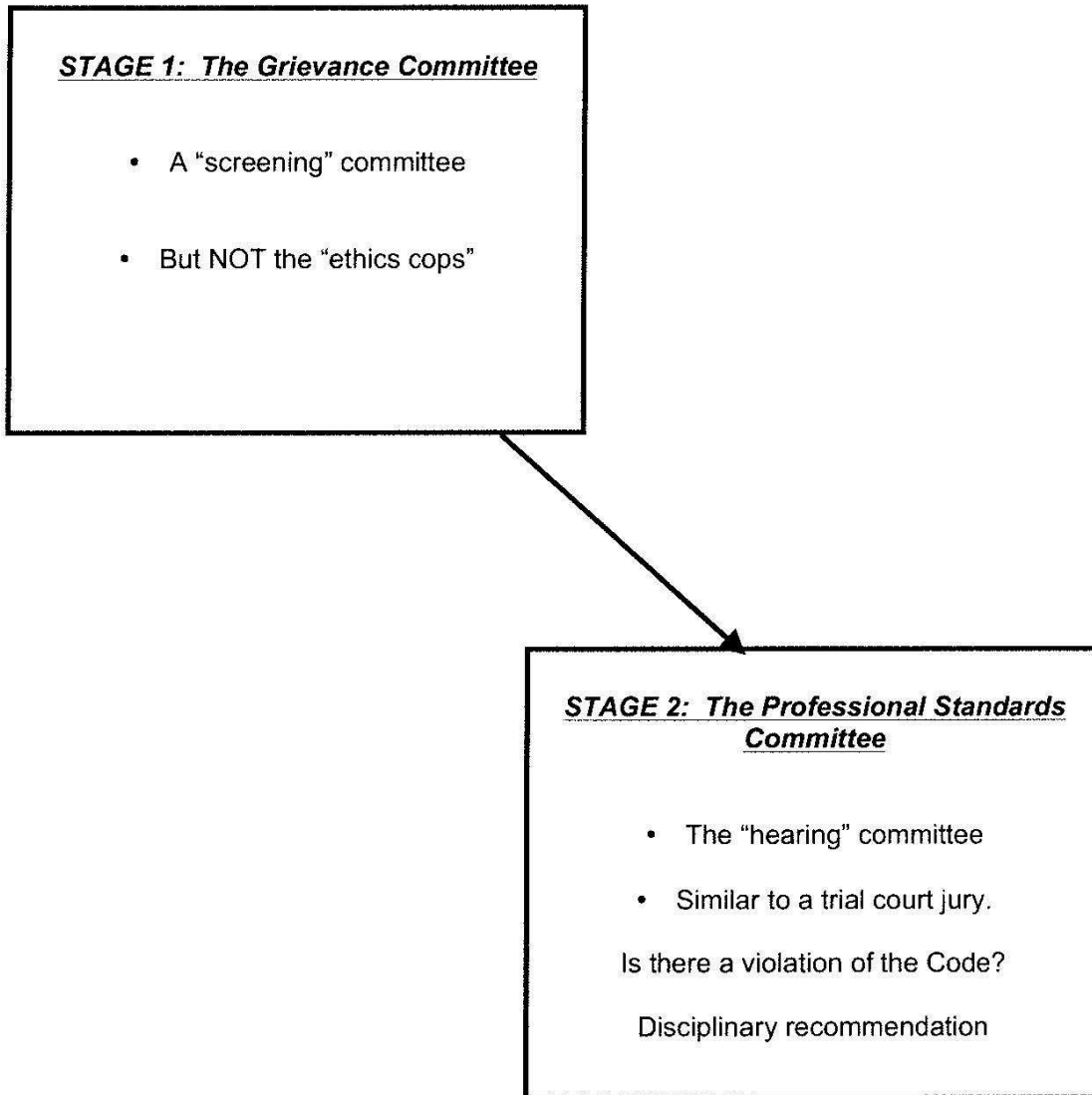
The personal feelings of the agent on a course of action cannot override the lawful instructions of the client.

Overview of the Enforcement Process



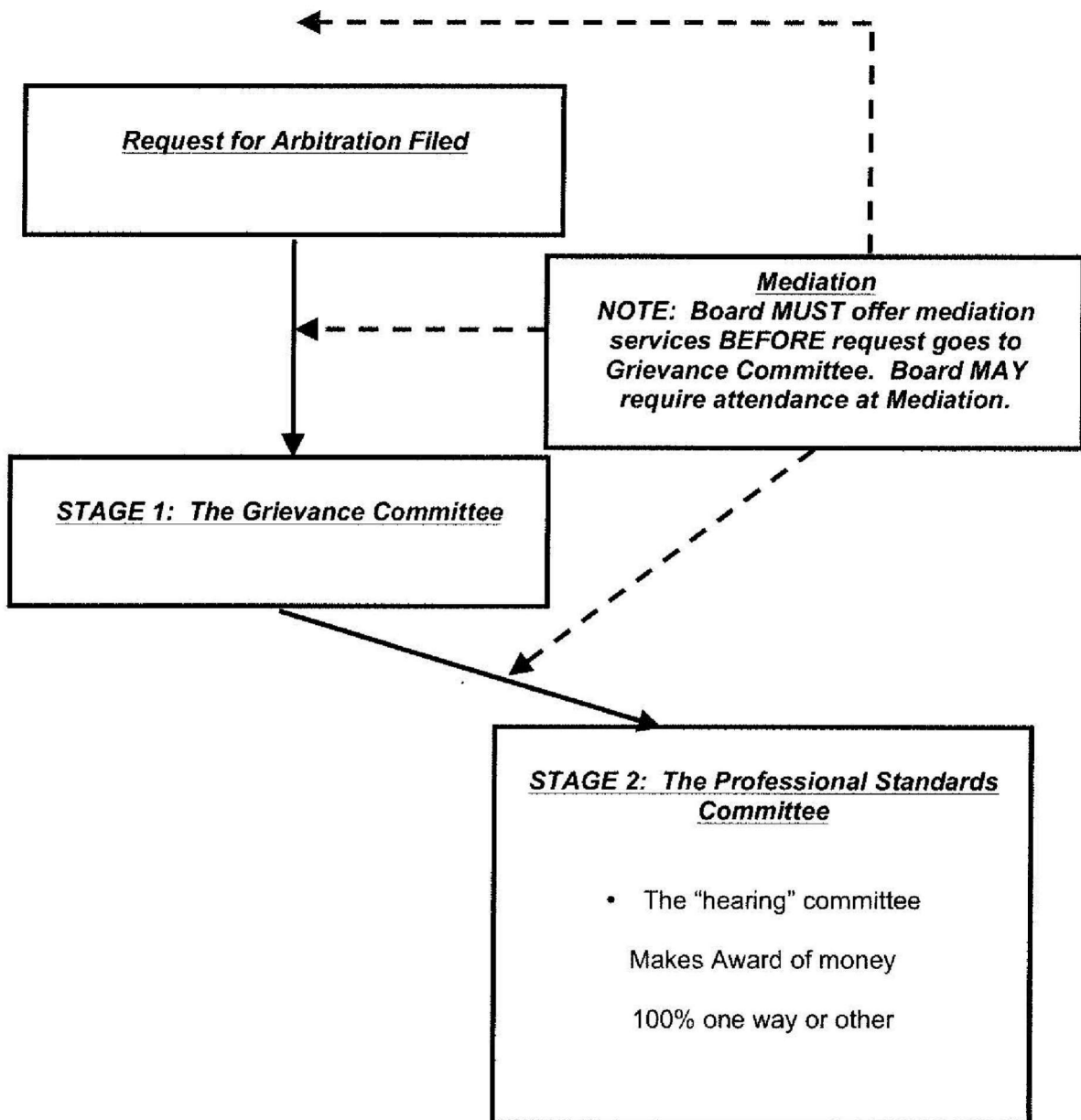
Professional Standards Seminar by Bruce H. Aydt, Copyright 2020

Ethics Complaints - The "Two Stage" Process



FINAL STAGE: Board of Directors (all ethics cases)

Arbitration Cases - The "Three Stage" Process



FINAL STAGE: Board of Directors (does not review at all except when a Request for Procedural Review ("appeal") is filed.)

Part 4: Procuring Cause and Arbitration

**Procuring Cause Case - You decide....
See attached ABCO Realty Exercise**

...Who gets the \$2,500?

1. What Is Procuring Cause?

Procuring Cause

“The direct originating of a series of events which, if followed through without a break in continuity, results in a sale upon terms acceptable to the seller.”

In your own words, what does procuring cause mean?

Factors for consideration:

1. No pre-determined rule of _____

“Rules of thumb”, prior decisions by other panels and other pre-determinants are to be disregarded.

Procuring cause shall be the primary determining factor in entitlement to compensation.

The agency relationship with the client and entitlement to compensation are separate issues.

2. _____ and appropriate parties

While primarily the responsibility of the Grievance Committee, arbitration Hearing Panels may consider questions of whether an arbitrable issue actually exists.

3. Relevance and _____

The general rule is that anything the Hearing Panel believes may assist it in reaching a fair, equitable, and knowledgeable decision is admissible.

Arbitration Hearing Panels are called on to resolve contractual questions, not to determine whether the law or the Code of Ethics has been violated.

4. Communication and contact

_____ - lack of contact from the buyer's point of view.

_____ - buyer doesn't want to work with you.

5. Conformity with _____ law

Award must conform with other binding laws.

6. Consideration of the _____ course of events

The standard of proof is a preponderance of the evidence, and the initial burden of proof rests with the party requesting arbitration.

Factors for Consideration by Arbitration Hearing Panels

The following factors are recommended for consideration by hearing panels convened to arbitrate disputes between brokers, or between brokers and their clients or their customers. This list is not all-inclusive nor can it be. Not every factor will be applicable in every instance. The purpose is to guide panels as to facts, issues, and relevant questions that may aid them in reaching fair, equitable, and reasoned decisions.

Factor #1. No predetermined rule of entitlement

Factor #2. Arbitrability and appropriate parties

Factor #3. Relevance and admissibility

Factor #4. Communication and contact - abandonment and estrangement

Factor #5. Conformity with state law

Factor #6. Consideration of the entire course of events

The nature and status of the transaction

1. What was the nature of the transaction? Was there a residential or commercial sale/lease?
2. Is or was the matter the subject of litigation involving the same parties and issues as the arbitration?

The nature, status, and terms of the listing agreement

1. What was the nature of the listing or other agreement: exclusive right to sell, exclusive agency, open or some other form of agreement?
2. Was the listing agreement in writing? If not, is the listing agreement enforceable?
3. Was the listing agreement in effect at the time the sales contract was executed?
4. Was the property listed subject to a management agreement?
5. Were the broker's actions in accordance with the terms and conditions of the listing agreement?
 - a. Were all conditions of the listing agreement met?
 - b. Did the final terms of the sale meet those specified in the listing agreement?
 - c. Did the transaction close? (Refer to Appendix I to Part Ten, Arbitrable Issues)
 - d. Did the listing broker receive a commission? If not, why not?

The nature, status and terms of the offer to compensate

1. Was an offer of cooperation and compensation made in writing? If not, how was it communicated?
2. Is the claimant a party to whom the listing broker's offer of compensation was extended?
3. Were the broker's actions in accordance with the terms and conditions of the offer of cooperation and compensation (if any)? Were all conditions of the agreement met?

Roles and relationships of the parties

1. Who was the listing broker?
2. Who was the cooperating broker or brokers?
3. Were any of the parties acting as subagents? As buyer brokers? In some other capacity?
4. Did any of the cooperating brokers have an agreement, written or otherwise, to act as agent or in some other capacity on behalf of any of the parties?
5. Were any of the brokers (including the listing broker) acting as a principal in the transaction?
6. What were the brokers' relationships with respect to the seller, the purchaser, the listing broker, and any other cooperating brokers involved in the transaction?
 - a. Was the party to whom the property was sold represented by a party with whom the broker had previously dealt?
 - b. Is the primary shareholder of the buyer-corporation a party with whom the broker had previously dealt?
 - c. Was a prior prospect a vital link to the buyer?
7. Are all appropriate parties to the matter joined?

Initial contact with the purchaser

1. Who first introduced the purchaser or tenant to the property?
2. When was the first introduction made?
 - a. Was the introduction made when the buyer had a specific need for that type of property?
 - b. Was the introduction instrumental in creating the desire to purchase?
 - c. Did the buyer know about the property before the broker contacted him? Did he know it was for sale?
 - d. Were there previous dealings between the buyer and the seller?

- e. Did the buyer find the property on his own?
3. How was the first introduction made?
 - a. Was the property introduced as an open house?
 - b. What subsequent efforts were made by the broker after the open house? (Refer to Factor #1)
 - c. Was the introduction made to a different representative of the buyer?
 - d. Was the "introduction" merely a mention that the property was listed?
 - e. What property was first introduced?

Conduct of the brokers

1. Were all required disclosures complied with?
2. Was there a faithful exercise of the duties a broker owes to his client/principal?
3. If more than one cooperating broker was involved, was either (or both) aware of the other's role in the transaction?
4. Did the broker who made the initial introduction to the property engage in conduct (or fail to take some action) which caused the purchaser or tenant to utilize the services of another broker? (Refer to Factor #4)
5. Did the cooperating broker (or second cooperating broker) initiate a separate series of events, unrelated to and not dependent on any other broker's efforts, which led to the successful transaction - that is, did the broker perform services which assisted the buyer in making his decision to purchase? (Refer to Factor #4)
 - a. Did the broker make preparations to show the property to the buyer?
 - b. Did the broker make continued efforts after showing the property?
 - c. Did the broker remove an impediment to the sale?
 - d. Did the broker make a proposal upon which the final transaction was based?
 - e. Did the broker motivate the buyer to purchase?
6. How do the efforts of one broker compare to the efforts of another?
 - a. What was the relative amount of effort by one broker compared to another?
 - b. What was the relative success or failure of negotiations conducted by one broker compared to the other?
7. If more than one cooperating broker was involved, how and when did the second cooperating broker enter the transaction?

Continuity and breaks in continuity (abandonment & estrangement)

1. What was the length of time between the broker's efforts and the final sales agreement?
2. Did the original introduction of the purchaser or tenant to the property start an uninterrupted series of events leading to the sale or lease, or was the series of events hindered or interrupted in any way?
 - a. Did the buyer terminate the relationship with the broker? Why? (Refer to Factor #4)
 - b. Did negotiations break down?
3. If there was an interruption or break in the original series of events, how was it caused, and by whom?
 - a. Did the seller change the listing agreement from an open listing to an exclusive listing agreement with another broker?
 - b. Did the purchaser's motive for purchasing change?
 - c. Was there interference in the series of events from any outside or intervening cause or party?
4. Did the broker who made the initial introduction to the property maintain contact with the purchaser or tenant, or could the broker's inaction have reasonably been viewed by the buyer or tenant as a withdrawal from the transaction?
5. Was the entry of any cooperating broker into the transaction an intrusion into an existing relationship between the purchaser and another broker, or was it the result of abandonment or estrangement of the purchaser, or at the request of the purchaser?

Conduct of the buyer

1. Did the buyer make the decision to buy independent of the broker's efforts/information?
2. Did the buyer negotiate without any aid from the broker?
3. Did the buyer seek to freeze out the broker?
 - a. Did the buyer seek another broker in order to get a lower price?
 - b. Did the buyer express the desire not to deal with the broker and refuse to negotiate through him?
 - c. Did the contract provide that no brokers or certain brokers had been involved?

Conduct of the seller

1. Was there bad faith evident from the fact that the difference between the original bid submitted and the final sales price equaled the broker's commission?
 - a. Was there bad faith evident from the fact that a sale to a third party was a straw transaction (one in which a non-involved party posed as the buyer) which was designed to avoid paying commission?
 - b. Did the seller freeze out the broker to avoid a commission dispute or to avoid paying a commission at all?
2. Was there bad faith evident from the fact that the seller told the broker he wouldn't sell on certain terms, but did so via another broker or via the buyer directly?

Leasing transactions

1. Did the cooperating broker have a tenant representation agreement?
2. Was the cooperating broker working with the "authorized" staff member of the tenant company?
3. Did the cooperating broker prepare a tenant needs analysis?
4. Did the cooperating broker prepare a market analysis of available properties?
5. Did the cooperating broker prepare a tour book showing alternative properties and conduct a tour?
6. Did the cooperating broker show the tenant the property leased?
7. Did the cooperating broker issue a request for proposal on behalf of the tenant for the property leased?
8. Did the cooperating broker take an active part in the lease negotiations?
9. Did the cooperating broker obtain the tenant's signature on the lease document?
10. Did the tenant work with more than one broker; and if so, why?

Part 5: Mediation and Arbitration

Local Board and Association Rules

A Closer Look at Mediation

What is Mediation?

Whenever people work, play, or live together, there's potential for disputes. And in our competitive business, we sometimes end up in conflict with one another.

REALTORS® have several options for resolving legal and ethical disputes, but mediation is becoming a common choice for settling both disputes between buyers and sellers and those between REALTORS®. It's also grown in favor in other industries and with federal courts.

Mediation is cost-effective and fast and gives you a significant role in the outcome. With litigation or arbitration, someone else makes the decision. But in mediation the parties have control and fully participate.

Mediation is a negotiation moderated by a neutral party and can last from a few hours to a full day. For the parties involved, the up-front preparation is time-consuming--writing letters, making phone calls, and taxing your people skills--but the payoff is remarkable: Mediators nationwide cite an 80 percent success rate in resolving disputes.

In a typical mediation session, the mediator introduces the parties, outlines the procedure, and invites agreement based on specified ground rules. After a confidentiality agreement is signed by the parties, the mediator listens to the presentations from each party. This is usually followed by private meetings between the mediator and each party.

In the private meetings, or caucuses, the respective parties share confidential information with the mediator that they may not want disclosed to the other party. The caucus also gives the mediator the opportunity to discuss privately with the respective parties what the mediator sees as the hurdles, weaknesses, or problems. The confidential sessions provide an opportunity for the creativity and the anonymity that may be necessary to resolve some disputes.

The mediator helps the parties see and appreciate the other points of view and develop options for settling the dispute. In a high percentage of cases, the mediator is able to structure an agreement the parties are comfortable with.

Currently, mediation is an optional service local boards of REALTORS® can offer their members. Given its speed, economy, and efficiency in resolving disputes, it's likely that more boards will begin to offer this service.

Mediation v. Arbitration	

Mediation VS. Arbitration

Differences in Participants

Differences in Possible Outcomes

Mediation won't work when:

- A precedent is needed.
- Vindication/punishment remains the main objective.
- The jackpot syndrome is involved.

NOTE: Both mediation and arbitration are confidential.

Part 6: Filing a Grievance

Ethics Complaint/Arbitration Request Checklist

- Contact the respondent's local board/association for the appropriate forms.
- **Ethics** — Complete the ethics complaint form and provide a written explanation that includes the facts on which the alleged violation(s) is based, cite the appropriate Article(s) and include any other appropriate documentation.
- **Arbitration** — Complete the arbitration request form, attach the details of the dispute, and enclose the appropriate deposit along with whatever documentation that may help to substantiate your position.
- The ethics complaint or arbitration request will then be sent to the Grievance Committee for review.
- The Grievance Committee may, if deemed appropriate, send a copy of the ethics complaint and/or arbitration request to the respondent for a written response.
- The Grievance Committee, which functions much like a grand jury, will then review the ethics complaint and/or arbitration request (and response, if any).
- If the Grievance Committee refers the ethics complaint or arbitration request for a hearing, the parties will be advised of the referral. The respondent will be requested to submit a written response if one has not already been filed.
- If the Grievance Committee determines that a hearing is *not warranted*, the parties will be advised that the matter has been dismissed and notified of the opportunity to appeal the Grievance Committee's dismissal to the Board of Directors.
- If the Grievance Committee determines that a hearing *is warranted*, the parties will be advised of the date, time, and place of the hearing subsequent to having an opportunity to challenge any of the hearing panelists for cause.
- During the hearing, the parties have an opportunity to present their positions. Parties may exercise their right to bring witnesses and/or attorneys to the hearing. The standard of proof in an *ethics* complaint is clear, strong, and convincing evidence. The standard of proof that must be observed to prevail in an *arbitration* proceeding is a preponderance of the evidence (i.e., that evidence, when taken as a whole, is more convincing than the evidence offered in opposition).
- The Hearing Panel's ethics decision or arbitration award is transmitted to the parties. Either party may file an *ethics* appeal or rehearing request with the President, but the complainant may only appeal on a procedural basis. The parties involved in arbitration may appeal only on the basis that there was a procedural irregularity that materially worked to their detriment.
- The Board of Directors, either on an ethics appeal or after the ethics appeal period has expired, renders its final decision, which will in turn be transmitted to the parties. Arbitration awards are considered final and binding subsequent to the expiration of the procedural review period. For more information on Code of Ethics enforcement procedures or to review the complete *Code of Ethics and Arbitration Manual*, contact your local board staff.

[Source: NAR Code of Ethics Enforcement Brochure]

Part 7: What Does True Professionalism Look Like?

Pet peeves: What do other agents do that complicate your professional life?

1. When making appointments
2. When showing property
3. When making and presenting offers
4. Other interactions with agents
5. Other interactions with clients/customers

Flip side: Identify some best practices that you have witnessed from other agents?

APPENDIX 1: Pathways to Professionalism

While the Code of Ethics and Standards of Practice of the National Association establishes objective, enforceable ethical standards governing the professional conduct of REALTORS®, it does not address issues of courtesy or etiquette. These Professional courtesies are intended to be used by REALTORS® on a voluntary basis, and cannot form the basis for a professional standards complaint.

Respect for the Public

1. Follow the “Golden Rule” – Do unto others as you would have them do unto you.
2. Respond promptly to inquiries and requests for information.
3. Schedule appointments and showings as far in advance as possible.
4. Call if you are delayed or must cancel an appointment or showing.
5. If a prospective buyer decides not to view an occupied home, promptly explain the situation to the listing broker or the occupant.
6. Communicate with all parties in a timely fashion.
7. When entering a property, ensure that unexpected situations, such as pets, are handled appropriately.
8. Leave your business card if not prohibited by local rules.
9. Never criticize property in the presence of the occupant.
10. Inform occupants that you are leaving after showings.
11. When showing an occupied home, always ring the doorbell or knock – and announce yourself loudly – before entering. Knock and announce yourself loudly before entering any closed room.
12. Present a professional appearance at all times; dress appropriately and drive a clean car.
13. If occupants are home during showings, ask their permission before using the telephone or bathroom.
14. Encourage the clients of other brokers to direct questions to their agent or representative.
15. Communicate clearly; don’t use jargon or slang that may not be readily understood.
16. Be aware of and respect cultural differences.
17. Show courtesy and respect to everyone.
18. Be aware of – and meet – all deadlines.
19. Promise only what you can deliver – and keep your promises.
20. Identify your REALTOR® and your professional status in contacts with the public.
21. Do not tell people what you think – tell them what you know.

Respect for Property

1. Be responsible for everyone you allow to enter listed property.
2. Never allow buyers to enter listed property unaccompanied.
3. When showing property, keep all members of the group together.
4. Never allow unaccompanied access to property without permission.
5. Enter property only with permission even if you have a lockbox key or combination.
6. When the occupant is absent, leave the property as you found it (lights, heating, cooling, drapes, etc). If you think something is amiss (e.g. vandalism) contact the listing broker immediately.
7. Be considerate of the seller's property. Do not allow anyone to eat, drink, smoke, dispose of trash, use bathing or sleeping facilities, or bring pets. Leave the house as you found it unless instructed otherwise.
8. Use sidewalks; if the weather is bad, take off shoes and boots inside the property.
9. Respect sellers' instructions about photographing or video graphing their properties'.

Respect for Peers

1. Identify your REALTOR® and professional status in all contacts with other REALTORS®.
2. Respond to other agents' calls, faxes, and e-mails promptly and courteously.
3. Be aware that large electronic files with attachments or lengthy faxes may be a burden on recipients.
4. Notify the listing broker if there appears to be inaccurate information on the listing.
5. Share important information about a property, including the presence of pets; security systems; and whether sellers will be present during the showing.
6. Show courtesy, trust and respect to other real estate professionals.
7. Avoid the inappropriate use of endearments or other denigrating language.
8. Do not prospect at other REALTORS®' open houses or similar events.
9. Return keys promptly.
10. Carefully replace keys in the lockbox after showings.
11. To be successful in the business, mutual respect is essential.
12. Real estate is a reputation business. What you do today may affect your reputation – and business – for years to come.

[Source: NAR, Revised 11/13]

APPENDIX 3: “Violation or Not a Violation”

1. You are on your way to a concert when you get a call that an offer on one of your listings is at your office. The offer expires in 36 hours. You decide to wait until morning to pick up the offer and present it to the sellers.
 - Violation
 - Not a violation

2. Since the house is a vacant foreclosure, you comply with your buyer’s wish that you leave the back door open so that your buyer can bring his parents by later the same afternoon. You check the house later that afternoon to make sure that it is secure.
 - Violation
 - Not a violation

3. Your client, the attorney, says that she thinks the list price should be \$330,000. Based on your research, you feel that the property is worth more like \$350,000. She’s the boss so you say nothing.
 - Violation
 - Not a violation

4. Late one night, you meet your clients in a parking lot so that they can sign documents to complete the transaction. You tell them that you will get copies to them sometime tomorrow. They say, “OK.”
 - Violation
 - Not a violation

5. Your Bosnian customers say that they would really like to live close to other Bosnians. You decide to put them in touch with a Bosnian friend so that they can discuss neighborhoods.
 - Violation
 - Not a violation

6. You are contacted to list a complex commercial property. You keep your lack of experience to yourself and respond to the seller that you will gladly take the listing.
 - Violation
 - Not a violation

Self-Assessment Test

1. The Code of Ethics is based on the concept of:
 - a. Let the buyer beware
 - b. Let the seller beware
 - c. Let the public be served
 - d. Let the public fend for themselves

2. The Code of Ethics was adopted:
 - a. To establish standards of conduct for the industry
 - b. Only as “recommendations” for proper conduct
 - c. In 1931
 - d. Long after real estate licensing laws were in existence

3. The Preamble to the Code:
 - a. Sets out aspirational ideals that REALTORS® should strive to attain
 - b. Can be used as the basis for disciplinary action against a REALTOR®
 - c. Requires REALTORS® to meet the standards set forth in the Preamble
 - d. Is a summary of all the articles included in the Code

4. The Code is primarily enforced by:
 - a. The National Association of REALTORS®
 - b. State associations of REALTORS®
 - c. Local associations of REALTORS®
 - d. None of the Above

5. The two basic types of complaints handled by local associations are:
 - a. Ethics complaints and license law complaints
 - b. License law complaints and mediation matters
 - c. Ethics complaints and requests for arbitration
 - d. License law complaints and request for arbitration

6. The three committees or groups that are involved in the Code enforcement process are:
 - a. Grievance Committee, Appeals Committee, and Board of Directors
 - b. Professional Standards Committee, Arbitration Committee, and Mediation Committee
 - c. Professional Standards Committee, Mediation Committee, Board of Directors
 - d. Grievance Committee, Professional Standards Committee, Board of Directors

7. A request for mandatory arbitration is based on:
 - a. A monetary dispute between REALTORS® (principals) in different firms
 - b. A legal claim for damages between REALTORS® in different firms
 - c. A monetary dispute between salesperson in different firms
 - d. A legal claim for damages between a salesperson and his/her broker

8. A request for arbitration is most commonly based on a dispute about:
 - a. A listing commission
 - b. A cooperative (selling) commission
 - c. An earnest money dispute
 - d. A claim for damages

9. The concept of procuring cause is used to decide commission disputes in arbitration cases. Which of the following statements is true about the concept of procuring cause?
 - a. No predetermined rules of entitlement are allowed to be used by a hearing panel
 - b. A hearing panel should not consider the entire course of conduct in the transaction and should decide the case on one factor.
 - c. Whether an agent abandoned or estranged a buyer is not important in determining which party will receive an award
 - d. Generally, a hearing panel should split an award and should not make the award all to one party or the other

10. REALTORS have an obligation to protect and promote the interests of their clients but also have an obligation to treat all parties:
 - a. Fairly
 - b. Honestly
 - c. Fairly and Honestly
 - d. Politely

11. If a listing broker tells another broker, "I'll cooperate with you," the other broker:
 - a. May assume that the listing broker will pay him/her a cooperative commission
 - b. May not assume that the listing broker will pay him/her a cooperative commission
 - c. Has an arbitration claim against the broker if the listing broker fails to pay a cooperative commission
 - d. Has a legal claim for cooperative commission against the listing broker if the listing broker refuses to pay a cooperative commission

12. A cooperating broker in a transaction may:
 - a. Claim to have “sold” the property involved in the transaction
 - b. Post a “sold” sign on the property involved in the transaction
 - c. Not claim to have “sold” the property but may state that they have “participated” or “assisted” in the transaction
 - d. Both A and B

13. Disciplinary action in an ethics complaint may NOT include:
 - a. A fine not to exceed \$5000
 - b. A letter of reprimand
 - c. A requirement that the respondent attend a course of education
 - d. A written apology

14. When prospecting for new clients, the Code of Ethics prohibits the using _____ as a source of prospects
 - a. “For Sale by Owner” signs
 - b. Other agents
 - c. Telemarketing
 - d. The MLS

15. _____ disclosure of agency is required before providing any real estate brokerage services to a consumer.
 - a. Written
 - b. Verbal
 - c. Written and verbal
 - d. No form of